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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/849,322	05/04/2001	Paul F. Klein	G&C 30695.21-US-U1	9218

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EXAMINER
BAYARD, DJENANE M

ART UNIT	PAPER NUMBER
2141	

DATE MAILED: 03/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	**Applicant(s)**
Office Action Summary	09/849,322	KLEIN, PAUL F.
	Examiner	**Art Unit**	
	Djenane M. Bayard	2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>04 January 2006</u>.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1,3-7,9-14,16-20,22-27,29-33 and 36-39* is/are pending in the application.

　 4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1,4-7,9-14,17-20,22-27,30-33 and 36-39* is/are rejected.

7) ☒ Claim(s) *3,16 and 29* is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

　 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　 a) ☐ All b) ☐ Some * c) ☐ None of:

　　 1. ☐ Certified copies of the priority documents have been received.

　　 2. ☐ Certified copies of the priority documents have been received in Application No. _____.

　　 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

　 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
　 Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
　 Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1.   This is in response to amendment filed on 1/04/06 in which claims 1, 3-7, 9-14, 16-20,

22-27, 29-33 and 36-39 are pending.

Response to Arguments

2.   Applicant's arguments with respect to claims 1, 14 and 27 have been considered but are

moot in view of the new ground(s) of rejection.

Claim Objections

3.   Claims 3, 16 and 29 are objected to under 37 CFR 1.75(c), as being of improper

dependent form for failing to further limit the subject matter of a previous claim. Applicant is

required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent

form, or rewrite the claim(s) in independent form. a claim in dependent form shall contain a

reference to a claim previously set forth and then specify a further limitation of the subject matter

claimed. A claim in dependent form shall be construed to incorporate by reference all the

limitations of the claim to which it refers.

Claims 36, 38 and 39 are objected to because of the following informalities: claims 36,

38 and 39 are dependent of claims 35 that was canceled. Appropriate correction is required.

Claim 34 is objected to because of the following informalities: Applicant cited that claim

34 was canceled. Appropriate correction is required.

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

5.   Claims 1, 4-7, 9, 12-14, 17-20, 22, 25-27, 30-33 and 39 are rejected under 35 U.S.C.

103(a) as being unpatentable over U.S. Patent Application No. 2001/0010059 to Burman et al in

view of U.S. Patent Application No. 2004/0153792 to Merriam.

a.   As per claims 1, 14 and 27, Burman et al teaches a computer-implemented method for

obtaining information across a network comprising: (a) determining a speed of a network

connection to which a computer is attached by (i) a client transmitting a request, across the

network connection, to a calibrated object library on a server, for an object of pre-known size

and properties (See page 6, paragraph [0066], the user's browser to fetch or request an image by

sending a fetch image request) ii) obtaining the object of the pre-known size and properties

from across the network connection (See page 6, paragraph [0070], the receipt by the user's

browser of a fetch image request) and measuring a round-trip response time calculated from the

transmitting of the request to completion of the obtaining from across the network connection

(See page 7, paragraph [0070], *this measured time will closely approximate the round-tip*

transfer time between the user's computer or browser and the server from which the image

during the step 114 was served) and (b) obtaining information from across the network

connection based on the speed of the network connection wherein (i) a size of the information

to be obtained decreased as the speed of the network connection decreases (See page 8, paragraph [0079], *Once the transfer time and/or bandwidth (the term "bandwidth shall also encompass the concept of "effective bandwidth"), if the transfer time between the server and the user's computer is short enough or the user's bandwidth for the connection between the server and the user's computer is large enough, the user may be connected via a high bandwidth network to the server. Therefore, rich media files may be sent to the user's computer without requiring significant amounts of time. In contrast, if the transfer time between the server and the user's computer is sufficiently long or the bandwidth for the connection between the user's computer and the server is too small, the user may be connected via a low bandwidth network to the server. Therefore, it may be preferable to send only smaller files in response to image request signals generated by the user's browser).* (ii) the information is obtained across the network connection from one or more object libraries that maintain the information in various sizes (See page 4, paragraph [0036]).

Merriam teaches obtaining the object of the pre-known size and properties from across the network connection; and measuring a round-trip response time calculated form the transmitting of the request to completion of the obtaining of the object form across the network connection without delays (See page 4, paragraph 0040]).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the teaching of Merriam in the claimed invention of Burman et al in order to allow a technician to determine problems associated with the network (See page 4, paragraph [0040]).

b.   As per claims 4, 17 and 30, Burman et al in view of Merriam teaches the claimed

invention as described above. Furthermore, Burman et al teaches wherein the information

comprises graphics (See page 4, paragraph [0036]).

c.   As per claims 5, 18 and 31, Burman et al in view of Merriam teaches the claimed

invention as described above. Furthermore, Burman et al teaches wherein the information to be

obtained is reduced in size such that the graphic is physically smaller visually as the speed of the

network connection decreases (See page 4, paragraph [0036]).

d.   As per claims 6, 19 and 32, Burman et al in view of Merriam teaches the claimed

invention as described above. Furthermore, Burman et al teaches wherein the information to be

obtained is reduced in size such that color is diminished from the graphic as the speed of the

network connection decreases (See page 4, paragraph [0036]).

e.   As per claims 7, 20 and 33, Burman et al in view of Merriam teaches the claimed
invention as described above. Furthermore, Burman et al teaches wherein the information to be
obtained is reduced in size such that color is removed and shades of gray are reduced from the
graphic as the speed of the network connection decreases (See page 4, paragraph [0036]).

f.   As per claims 9, 22 and 35 Burman et al in view of Merriam teaches the claimed
invention as described above. Furthermore, Burman et al teaches wherein the information is
obtained from a server across the network connection to a client (See page 6, paragraph [0066-
0070]).

g.   As per claims 12 and 25 Burman et al in view of Merriam teaches the claimed invention

as described above. Furthermore, Burman et al teaches determining particular information to

obtain based on the speed of the network connection; and obtaining the particular information

from the server (See page 4, paragraph [0036]).

h.   As per claims 13, 26 and 39, Burman et al in view of Merriam teaches the claimed

invention as described above. Furthermore, Burman et al teaches issuing a request for

information (See page 6, paragraph [0066]); transmitting the speed of the network connection to

the server; and obtaining particular information from the server, wherein the server determines

the particular information based on the speed of the network connection (See page 7, paragraph

[0070]).

6.   Claims 10-11, 23-24 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable

over U.S. Patent Application No. 2001/0010059 to Burman et al in view of in view of U.S.

Patent Application No. 2004/0153792 to Merriam as applied to claims 1,14 and 27 above, and

further in view of U.S. Patent No. 6,212,564 to Harter et al.

a.   As per claims 10 and 36, Burman et al in view of Merriam teaches the claimed invention

as described above. However, Burman et al in view of Merriam fails to teach wherein the

determining a speed is performed by an applet obtained by the client.

        Harter et al teaches wherein the determining a speed is performed by an applet obtained

by the client (See abstract).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the determining a speed is performed by an applet obtained by the client as taught by Harter et al in order to optimized the client based on characteristics performance (See abstract).

b.   As per claim 23, Burman et al in view of Merriam teaches the claimed invention as described above. However, Burman et al in view of Merriam fails to teach wherein the adaptive agent is an applet.

Harter et al teaches wherein the adaptive agent is an applet (See col. 4, lines 41-65).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the adaptive agent is an applet as taught by Harter et al in the claimed invention of Burman et al in view of Merriam in order to optimize the client based on characteristics performance (See abstract).

c.   As per claims 11, 24 and 37, Burman et al in view of Merriam teaches the claimed invention as described above. However, Burman et al fails in view of Merriam fails to teach wherein an applet tag corresponding to the obtained applet is present in a web page obtained by the client, wherein the applet tag is dynamically inserted into the web page by the server.

Harter et al teaches wherein an applet tag corresponding to the obtained applet is present in a web page obtained by the client, wherein the applet tag is dynamically inserted into the web page by the server (See col. 3, lines 11-31).

It would have bee obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein an applet tag corresponding to the obtained applet is present in a web page obtained by the client, wherein the applet tag is dynamically inserted into the web page by the server as taught by Harter et al in the claimed invention of Burman et al in view of Merriam in order to optimize the client based on characteristics performance (See abstract).

d.   As per claim 38, Burman et al in view of Merriam teaches the claimed invention as described above. However, Burman et al fails in view of Merriam fails to teach the client determining particular information to obtain based on the speed of the network connection; and the client obtaining the particular information from the server.

Harter et al teaches the client determining particular information to obtain based on the speed of the network connection; and the client obtaining the particular information from the server (See col. 4, lines 31-50).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the client determining particular information to obtain based on the speed of the network connection; and the client obtaining the particular information from the server as taught by Harter et al in the claimed invention of Burman et al in view of Merriam in order to optimize the client based on characteristics performance (See abstract).

Conclusion

7.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Djenane M. Bayard whose telephone number is (571) 272-3878.
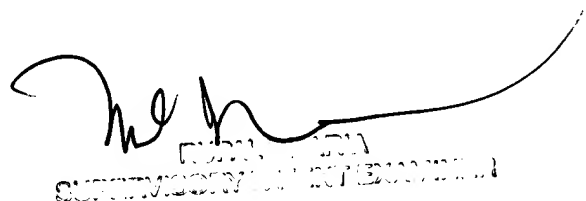
The examiner can normally be reached on Monday- Friday 5:30 AM- 3:00 PM..

       If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

       Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Djenane Bayard

Patent Examiner